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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,850	02/22/2000	Susan L. Bragg	16581-1864	2081

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EXAMINER

MERLINO, AMANDA H

ART UNIT PAPER NUMBER

2877

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/507,850

Applicant(s)

BRAGG ET AL.

Examiner

Amanda H Merlino

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 4, and 7 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sahagen (5,510,895).

Sahagen teaches of a method for performing spectral analysis comprising the steps of inserting a fiber optic probe comprising a launch cable (4), a return cable (5), a launch lens portion and a return lens portion (window, see abstract), a reflector (8), the lens and reflector being arranged and adapted to form a light pathway whereby light transmitted through the launch cable (4) pass through the launch lens, through a volume of the dissolution media in the spacing between the launch lens and the reflector.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 5-6, and 8-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Sahagen (5,510,895) in view of Nave et al (5,404,218).

Art Unit: 2877

Sahagen teach of a method for performing spectral analysis comprising the steps of inserting a fiber optic probe comprising a launch cable (4), a return cable (5), a launch lens portion and a return lens portion (window, see abstract) , a reflector (8), the lens and reflector being arranged and adapted to form a light pathway whereby light transmitted through the launch cable (4) pass through the launch lens, through a volume of the dissolution media in the spacing between the launch lens and the reflector and a sheath portion containing the lens and the reflector.

Sahagen lacks the teaching of the sample diameter being equal to or less than 4mm.

Nave et al teach of the sample diameter being equal to or less than 4 mm.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to utilize the teachings of Nave et al wherein the diameter of the sample cell is chosen to provide the desired sample volume and even gives an example of the sample cell diameter being 5mm (col 7, lines 10-20). In order to accomodate for smaller samples, one would desire a smaller sample area. Examiner notes that even though Sahagen (primary reference) does not specifically show the sample diameter being equal or less than 4 mm; Sahagen does show from the size of the fiber optics that the fiber optic probe is very small and is within the scope of the claims of the present application. However, examiner has used a secondary reference (Nave et al) to show one who clearly shows the use of small cell diameters.

Art Unit: 2877

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. ***

Freud et al (5,485,270) teach of small sample areas equal to or less than 5mm (column 5).

O'Rourke et al (5,039,224) teach of a sample between a lens and a reflector.

Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax Machine located in Crystal Plaza 4. The form of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is:

703-872-9306

If the applicant wishes to send a Fax dealing with a Proposed Amendment for discussion for a phone interview then the fax should:

1) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and


2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Examiner Amanda H. Merlino* whose telephone number is (703) 305-3488. The examiner can be reached on Mondays and Thursdays only.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-0956.

Amanda H. Merlino *ah*
Patent Examiner
Art Unit 2877
September 22, 2003/ahm



FRANK G. FONT
SUPERVISORY PATENT
EXAMINER